

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HAPPY HOUR THINKING, LLC,

Plaintiff,

v.

ZEUS, *et al.*,

Defendants.

Civil Action No. 23-1293

(Judge Horan)

FILED UNDER SEAL

[PROPOSED] PRELIMINARY INJUNCTION ORDER

WHEREAS, on July 18, 2023, Plaintiff filed an *Ex Parte* Application for the following:

1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts, as defined *infra*; 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against all of the Defendants identified on the attached Schedule “A”, Amazon Services, LLC d/b/a Amazon.com, and Amazon Payments, Inc. d/b/a Amazon Pay (collectively “Amazon”), Joybuy Marketplace operated by Jingdong E-Commerce (Trade) Hong Kong Co. , Ltd and JD E-Commerce America (collectively, “Joybuy”), Whaleco Inc., a Delaware Corporation, which is a wholly owned subsidiary of Pinduoduo Inc. which is owned by PDD Holdings (collectively, “Temu”), eBay, Inc. d/b/a ebay.com, Walmart Inc. and Wal-Mart.com USA, LLC, wish.com, Alibaba.com US LLC d/b/a Alibaba.com and Aliexpress.com (“Third Party Service Providers”) and financial institutions, including but not limited to, Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. AliPay (China) Internet Technology Co. Ltd., and Alipay.com Co., Ltd. (collectively referred to as “AliPay”)¹,

¹ WorldPay US, Inc. (“WorldPay”) processes transactions on behalf of Alibaba and Alipay, which may appear as “Aliexpress” on a cardholder’s credit card statement.

Amazon Payments, Inc., Walmart Pay, PayPal, Inc. d/b/a paypal.com, and Context Logic, Inc. d/b/a wish.com (“Financial Institutions”).²;

WHEREAS, on the same day, Plaintiff filed an *Ex Parte* Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3);

WHEREAS, the Court entered the following Orders:

(A) 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts, against all the Defendants identified on the attached **Schedule “A”**, the Third-Party Service Providers, and the Financial Institutions (“TRO”)(July 19, 2023) (ECF No. 16); and

(B) an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)(February 19, 2023) (ECF No. 17);

WHEREAS, on August 16, 2023 at 8:30 a.m., Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, no Third-Party Service Providers or Financial Institutions appeared.

I. Order Continuing Restraints

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on July 19, 2023 (ECF No. 16), shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, Section 34 of the Lanham Act, and Section 283 of the Patent Act. The Court finds that Plaintiff relies upon a presumptively valid patent,

² Plaintiff acknowledges that it is seeking multiple forms of relief. Plaintiff will promptly provide supplemental briefing or oral argument on any issue should the Court request it.

and that nothing in the record calls that validity into question. The evidence establishes that Plaintiff has shown a sufficient likelihood of success on the merits of this action. The Court also concludes that Plaintiff has shown that immediate and irreparable injury, loss, and damage will likely result should the relief entered by this Order not be granted.

Specifically, the Court finds that Defendants' infringing products are likely to continue to cause Plaintiff to suffer loss profits, compromise the value of Plaintiff's brand, and negatively impact Plaintiff's relationships with its current customers and its ability to attract new customers. Defendants will not be harmed by the imposition of the injunctive relief requested, because the injunction only prohibits Defendants from taking actions they are otherwise not entitled to perform under the law. And finally, the public interest favors the issuance of the requested injunction, and Plaintiff has no adequate remedy at law for the immediate and irreparable harms identified.

Accordingly, each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall continue to be restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff's Patent, distribution, marketing, advertising, offering for sale, or sale of any Infringing Products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products that infringe upon at least one claim of the Plaintiff's Patent;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or

any other records or evidence relating to their User Accounts,³ Merchant Storefronts⁴ or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as “Defendants’ Assets”);

(3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, and/or display for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;

(4) each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately cease offering for sale the Infringing Products within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites, from search engines’ databases or cache memory, and any other form of use such terms or works which is visible to a computer user or serves to direct computer searches to Internet based e-commerce stores owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;

³ As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with at least one of the online marketplace platform(s), Aliexpress.com, Amazon.com, eBay.com, Joybuy, Temu, Walmart.com, and Wish.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all other persons in active concert with any of them.

⁴ As defined in the Application, a “Merchant Storefront” is any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

- (5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs;
- (6) each Defendant shall preserve copies of all computer files relating to the use of any User Accounts and/or Merchant Storefronts under the Seller IDs and shall take steps necessary to retrieve computer files relating to the use of the User Accounts and/or Merchant Storefronts under their Seller IDs that may be deleted before the entry of this Order;
- (7) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to Amazon Services, LLC d/b/a Amazon.com, and Amazon Payments, Inc. d/b/a Amazon Pay (collectively “Amazon”), Joybuy Marketplace operated by Jingdong E-Commerce (Trade) Hong Kong Co. , Ltd and JD E-Commerce America (collectively, “Joybuy”), Whaleco Inc., a Delaware Corporation, which is a wholly owned subsidiary of Pinduoduo Inc. which is owned by PDD Holdings (collectively, “Temu”), eBay, Inc. d/b/a ebay.com, Walmart Inc. and Wal-Mart.com USA, LLC, wish.com, Alibaba.com US LLC d/b/a Alibaba.com and Aliexpress.com (“Third Party Service Providers”) and financial institutions, including but not limited to, Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. Alipay (China) Internet Technology Co. Ltd., and Alipay.com Co., Ltd. (collectively referred to as “Alipay”)⁵, Amazon Payments, Inc., Walmart Pay, PayPal, Inc. d/b/a paypal.com, and Context Logic, Inc. d/b/a wish.com (“Financial Institutions”)⁶, and their related companies and affiliates,

⁵ WorldPay US, Inc. (“WorldPay”) processes transactions on behalf of Alibaba and Alipay, which may appear as “Aliexpress” on a cardholder’s credit card statement.

⁶ Plaintiff acknowledges that it is seeking multiple forms of relief. Plaintiff will promptly provide supplemental briefing or oral argument on any issue should the Court request it.

shall immediately identify and restrain all funds, as opposed to ongoing account activity, in or which are hereafter transmitted into the accounts related to the Defendants as identified on Schedule “A” hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s); (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other accounts subject to this Order; and (iii) any other accounts tied to or used by any of the Seller IDs identified on Schedule “A” hereto;⁷

- (8) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall immediately divert to a holding account for the trust of the Court all funds in or which are hereafter transmitted into all accounts related to Defendants identified in Schedule “A” hereto, and associated payment accounts, and any other accounts for the same customer(s) as well as any other accounts which transfer funds into the same financial institution account(s) as any other accounts subject to this Order;
- (9) The Third Party Service Provider(s) and Financial Institution(s) shall further, within five (5) business days of receiving this Order, provide Plaintiff’s counsel with all data that details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into financial account(s) which have been restrained. Such

⁷ This Order contemplates that discovery may reveal that Defendants may have other user accounts operated by other Third-Party Service Providers and Financial Institutions and that the additionally discovery Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall also be subject to the discovery, restraints and injunctions set forth in this Order.

restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account holders, until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by any Third-Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant to that Third Party Service Provider or Financial Institution's security interest in the funds) without express authorization of this Court;

(10) Upon Plaintiff's request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Provider(s) and Financial Institution(s), shall immediately cease fulfillment of and sequester Defendants' inventory assets corresponding to the Seller IDs identified on Schedule "A" hereto in its inventory, possession, custody, or control, and hold such goods in trust for the Court during pendency of this action;

(11) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, Third Party Service Provider or Financial Institution accounts which are being used by Defendants for the purpose of infringing on at least one claim of the Plaintiff's Patent;

(12) Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), subject to this Order may petition the Court to modify the asset restraint set out in this Order; and

(13) this Order and the Alternative Service Order shall remain in effect during the pendency of this action or until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Providers and Financial Institutions, is hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, or until further order of the Court:

(1) secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts") until further ordered by this Court; and

(2) within (5) days after receiving notice of this Order, providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts, and any other listings linked to the same sellers or linked to any other alias seller identification names being used and/or controlled by Defendants.

C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that, upon Plaintiff's request, within no later than five (5) calendar days of Plaintiff's request:

(1) Amazon is ordered to remove any seller identified by Plaintiff from the following Amazon Standard Identification Numbers (ASINs):): B098SS88PM (2 pack Black), B0BKHBK9P8 (2 pack Grey), B0BKN2LSWQ (2 pack Red), B098STNL5K (2 pack White), and B0B33KSQRV (4 pack Black/White).⁸;

(2) Amazon is ordered to suspend any ASIN that was associated with a product already identified by prior Order of this Court in the present lawsuit to be Counterfeit, Infringing, or unfairly competing, as designated in the Schedule A third column under “**Amazon ASIN Number(s)**” (i.e., any seller is prevented from listing for sale under the identified ASIN); and

(3) Upon Plaintiff’s request, any Third Parties are ordered to suspend any listing of a product that Plaintiff assert infringes at least one claim of the Plaintiff’s Patent, and/or infringes Plaintiff’s Works and/or Mark and/or Trade Dress, and is identified as originating outside of the United States and unfairly competing with Plaintiff’s Product.

II. Order Authorizing Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown through Defendants’ failure to: respond, participate in the ordered Rule 26(f) conference, and appear at the show cause hearing on August 16, 2023, Plaintiff may propound discovery upon Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such interrogatories within fourteen (14) days of service, to Plaintiff’s counsel.

⁸ These are the current ASINs assigned to the Plaintiff’s Products by Amazon. (Declaration of Ryan Kohli, ¶ 11).

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within fourteen (14) days of receiving actual notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall provide to Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, documents and records relating to:

- (1) all User Accounts and Defendants' Merchant Storefronts and account details, including, without limitation, identifying information and account numbers for any and all User Accounts and Defendants' Merchant Storefronts that Defendants have ever had and/or currently maintain with the respective Third-Party Service Provider;
- (2) the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- (3) the Defendants' methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Defendants' Merchant Storefronts, a full accounting of Defendants' sales history and listing history under such accounts and Defendants' Financial Accounts associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and
- (4) Defendants' unauthorized and unlicensed use of Plaintiff's Patent, Plaintiff's Works, Plaintiff's Trade Dress, and/or Plaintiff's Mark in connection with the distribution, marketing, advertising, offering for sale, or sale of any Infringing Products.

III. Security Bond

IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

IV. Unsealing Order

WHEREAS, the reasons for keeping the documents in this case sealed no longer exist, it is FURTHER ORDERED that the Clerk of Court is hereby directed to unseal all the documents previously filed under seal in this case.

SO ORDERED.

SIGNED this ____ day of August, 2023
Pittsburgh, Pennsylvania

Marilyn J. Horan
United States District Judge

cc Stanley D. Ference III, Esq.
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Brian Samuel Malkin, Esq.
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Schedule “A”
Defendants with Store Name and Seller ID

Defendant No.	Store/Seller Name	Seller ID
1	ZEUS	101043387
2	jiaroswwei	101172809
3	Koszal	101043404
4	PureSell	101243492
5	SHAPERME, inc	101224389
6	Shenzhen City Anston Technology Co., Ltd.	1600699778204, 1600699748350
7	Yiwu Changde Trading Co., Ltd.	1600796881958
8	Helloworld (Guangzhou) Import & Export Co., Ltd.	1600638967647, 1600462373053
9	Global Bridge Industry Co., Ltd.	1600483478911
10	Aangbs-Tools Store	1101808276
11	Beautiful Life house improvement Store	1101246993
12	Beautify Life 9 Store	1101746024
13	BJYXSZD romantic Store	1101895241
14	CC Home-Decor Store	1101863368
15	Coolco Store	1102644187
16	Digital & Convenient Store	1101560920
17	Funny Life Heal Store	1101547448
18	ILOVEIHOME Store	1101538960
19	Organization Dropship Store	1101542841
20	Reiki Store	1102591659
21	Romantic flowers Store	1101320660
22	Shop1102107715 Store	1102110662
23	Shop1102460340 Store	1102454431
24	Shop1102513137 Store	1102512177
25	Shop1102647567 Store	1102649522
26	Sonoff ShenZhen Store	1101235719
27	Warm warm warm Store	1101561070
28	BENOSPACE	ACVV0PGIDHTVX
29	Blurte431	AZYB6OQFMIQ6
30	Chenndus	A19JB4U5KYS1EN
31	Clina-us	A2HVLVYL8578Y5L

32	E-outstanding	AB0Z3CZXYVM06
33	Fupiupero-US	ABUVLNI2DG38I
34	Fuzhangchang	A251C70GHQUG9Z
35	GYbeimeidian	A2ZB3PLHREGYDA
36	Joneser0916	A3U8PGYF2MU62J
37	Mandy Meet	ANNYAPDVQXTAA
38	Mecxicy	A3BMND6J0WS9C4
39	Meiyyass	A320PRF5DL0GHE
40	Mirandalong-US	A2C0F8U7Q5SX2F
41	Nancong	A1H5K3TL9GBZ12
42	Naroote	AA3U1N3HAOFYS
43	Nitrip	AXKP3JTT4K7DQ
44	salmue	A46SVXD99K5JN
45	sunboruino	A20EV1HFK23EFH
46	Suntaskw	A3JN271H0LF8DG
47	Terlog	A24KK1JV764V60
48	Venderer Group	A1VTKZA1O34QGS
49	Vinnat us	A800K93L4PQ6B
50	Wadiue-US	A2DEKN8DORT2H4
51	xianghuiflagshipstore	AVC3H0Y3II3BE
52	Xunshi Electronic	A1ARXTYDR5UDPA
53	Xzhan-US	A1NTAMSY46SH7L
54	Yuqin Shop	AE53XGQBRY40A
55	Zeoo	A364RDEYR1KAU3
56	Zhengruus	A2A5MQYNQ5G8YU
57	tianzhu.mountain	354771950476
58	shaoyo-5	404314455772, 404314576941
59	dilux73	225563035500
60	wixo17-48	314502139122
61	ruolrl	155580863688
62	hgtr62	394535897793
63	meihao_2021	404335530565
64	zhangyixin86	394663399070
65	feijsaufl03	354713420670
66	goodsbetter	354859331738
67	Chengdu Jia Li Technology Co.	789535868
68	Chengdu Orange Blossom Cheng Technology Co.	539389858
69	Shenzhen Mingxin Yang Trading Co.	250439047

70	Chengdu Orange Blossom Cheng Technology Co.	451457839
71	Shenzhen Qianxing Yi Technology Co.	609162477
72	Shenzhen Qianxing Yi Technology Co.	362053570
73	Shenzhen Ming Xin Yang Trading Co.	250439047
74	Shenzhen Hao Yi Xin Technology Co.	726036389
75	Shenzhen Goodyear Technology Co.	335215174
76	Tuker	2763855412077
77	romadaiana70	5e6e574d4f421096d067c353
78	WANGYO	5e991d17ec962135c8ecb2aa